

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**WILLIAM E. ZIEM and  
CHARLES B. EBEL,  
Plaintiffs,**

v.

**Case No. 17-157492-CB  
Hon. James M. Alexander**

**CHRISTOPHER ASSEMANY,  
Defendant.**

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**OPINION AND ORDER RE: PLAINTIFFS' MOTION FOR RECONSIDERATION  
PURSUANT TO MCR 2.119(F)**

This matter is before the Court on Plaintiffs' Motion for Reconsideration Pursuant to MCR 2.119(F). The Court dispenses with oral argument in accordance with MCR 2.119(F)(2).

In review of Plaintiffs' motion, the Court relies on MCR 2.119(F)(3), which provides in relevant part:

[A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

“The grant or denial of a motion for reconsideration rests within the discretion of the trial court.” *Charbeneau v Wayne Cty. Gen. Hosp.*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

On February 22, 2017, Plaintiffs filed the present Complaint, alleging that the individual Defendant has failed to pay Plaintiffs' attorney fees as set forth in the parties' respective contracts for legal services. On March 3, 2017, the Court questioned its jurisdiction over the subject matter of the action and determined that the present lawsuit does not qualify for either

Business Court or Circuit Court jurisdiction. That same day, the Court dismissed the case without prejudice<sup>1</sup> in its Opinion and Order of Dismissal for Lack of Jurisdiction. Thereafter, Plaintiffs timely filed their Motion for Reconsideration wherein they argue that the Court committed palpable error for the reasons that jurisdiction is proper in both Business Court and Circuit Court, particularly in light of their equitable claims including Promissory Estoppel, Quantum Meruit, Declaratory Judgment, and Unjust Enrichment.

With respect to Plaintiffs' claim that this lawsuit qualifies for business court jurisdiction, the Court defers to its analysis within the March 3, 2017 Opinion and Order, which provides that business court jurisdiction is limited to actions involving a "business or commercial dispute" in which the amount in controversy exceeds \$25,000.00. See MCL 600.8035(1). The phrase "amount in controversy" refers to the amount of damages claimed. *Szyszlo v Akowitz*, 296 Mich App 40, 51; 818 NW2d 424 (2012). In other words, MCL 600.8035(1) requires that an action include a claim for monetary damages exceeding \$25,000.00 in order to qualify for business court jurisdiction. In this matter, Plaintiffs are only seeking monetary damages in the total amount of \$16,049.23<sup>2</sup>, exclusive of attorney fees, costs, and interest. Since Plaintiffs' lawsuit does not involve a claim for monetary damages in excess of \$25,000.00 as required by MCL 600.8035(1), the matter does not qualify for business court jurisdiction.

Regarding Plaintiffs' argument that this lawsuit qualifies for circuit court jurisdiction based upon their equitable claims, the Court shall examine the nature of Plaintiffs' equitable claims for purposes of this motion for reconsideration only.

Claims for unjust enrichment, promissory estoppel, and quantum meruit ask the Court to recognize an implied contract. "A contract will be implied only where no express contract

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<sup>1</sup> Plaintiffs are not precluded from filing a new action as this matter was dismissed without prejudice.

<sup>2</sup> Plaintiffs are seeking \$5,987.50 in favor of William E. Ziem and \$10,061.73 in favor of Charles B. Ebel.

exists. There cannot be an express and implied contract covering the same subject matter at the same time.” *Campbell v Troy*, 42 Mich App 534, 537; 202 NW2d 547 (1972), citing *Superior Ambulance Service v Lincoln Park*, 19 Mich App 655; 173 NW2d 236 (1969). That is, the Court will not imply a contract where an enforceable express contract between the parties covers the same subject matter. *HJ Tucker & Assoc, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550; 595 NW2d 176 (1999).

In light of Plaintiffs’ drafting of the Complaint, the Court finds that the nature of Plaintiffs’ claims is based in breach of contract due to the fact that express contracts govern the subject matter of the dispute. Additionally, the only remedy Plaintiffs seek under their equitable claims, specifically Counts II, III, and IV, are monetary damages. The Court observes further that under Count V, Declaratory Judgment, Plaintiffs do not request a declaration of rights by the Court.<sup>3</sup> Instead, Plaintiffs are only seeking monetary damages, attorney fees, interest, and costs. While Count I requests specific performance, Plaintiffs are actually seeking Defendant’s payment of attorney fees, namely the damages sought, pursuant to the terms of the two contracts.

As noted in the March 3, 2017 Opinion and Order, courts are not bound by the labels that parties attach to their claims. *Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539

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<sup>3</sup> MCR 2.605(A)(1) provides: “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” It is well settled that: An “actual controversy” under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve legal rights. *Int’l Union UAW v Cent Mich Univ Trs*, 295 Mich App 486, 495; 815 NW2d 132 (2012) (internal quotations and citations omitted). In *Skiera v Natl Indem Co*, 165 Mich App 184, 189-190; 418 NW2d 424 (1987), the Court of Appeals reasoned: “The purpose of the declaratory judgment rule was stated in 3 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), Rule 2.605, p 422: Declaratory judgment has been heralded as one of the most significant procedural reforms of the century. Its purpose is to enable parties, in appropriate circumstances of actual controversy, to obtain an adjudication of their rights **before actual injury occurs**, to settle matters before they ripen into violations of law or a breach of contractual duty, to avoid a multiplicity of actions by affording a remedy for declaring in one expedient action the rights and obligations of all litigants, or to avoid the strictures associated with obtaining coercive relief, when coercive relief is neither desired nor necessary to resolve the matter.” [Emphasis added]. The only dispute in this matter revolves around whether Defendant owes any monies for past legal services. Simply, the current action does not fit within any of the purposes for declaratory judgment. The disputed “injury” in this case has already occurred.

(1998). Indeed, “[i]t is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim.” *Adams v Adams* (On Reconsideration), 276 Mich App 704, 710-711; 742 NW2d 399 (2007).

Reviewing the Complaint in its entirety, the Court again finds that Plaintiffs are not in fact seeking equitable relief, but rather a judgment of monetary damages in the total amount of \$16,049.23, exclusive of attorney fees, costs, and interest.

The Court has considered Plaintiffs’ arguments in their reconsideration motion, as they relate to the March 3, 2017 Opinion and Order, and finds that Plaintiffs’ arguments merely present the same issues ruled on by the Court and fail to demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

For the reasons stated herein, the Court denies Plaintiffs’ Motion for Reconsideration Pursuant to MCR 2.119(F).

**IT IS SO ORDERED.**

May 9, 2017  
Date

/s/James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge  
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